

Mandatory Sick Leave for New York Employees Impacted by COVID-19

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Yesterday, Governor Cuomo signed impactful legislation that will provide protected sick leave and benefits to employees affected by the COVID-19 pandemic. The new law also includes a second measure, effective January 2021, requiring New York employers to provide general sick leave to their employees.

The first measure, which takes effect immediately, provides varying levels of benefits depending on the number of employees (measured as of January 1, 2020) and the employer's net income for the 2019 tax year.

Employees subject to mandatory or precautionary orders of quarantine or isolation issued by the state of New York, the department of health, local board of health, or any governmental entity duly authorized to issue such order due to COVID-19, will be entitled to paid sick leave and benefits as follows:

Number of Employees	Number of Sick Days	Other Benefits
Ten or fewer and under \$1 million net income	<i>Unpaid</i> leave until termination of order	Immediately qualify for Paid Family Leave and temporary disability; full job protection
Ten or fewer and \$1 million or more net income	5 days <i>paid</i> and unpaid leave until termination of order	After 5 days leave, qualify for Paid Family Leave and temporary disability; full job protection
11 to 99	5 days <i>paid</i> and unpaid leave until termination of order	After 5 days leave, qualify for Paid Family Leave and temporary disability; full job protection
Over 100	14 days <i>paid</i> *	Unclear when/if qualify for Paid Family Leave and temporary disability; full job protection
Public Employers	14 days <i>paid</i> *	Unclear when/if qualify for Paid Family Leave and temporary disability; full job protection

**The law does not require additional unpaid leave or provide benefits for employees working for large or public employers. This may be because the legislation presumes such a COVID-19 order would last 14 days maximum.*

Job Protection Measures

The law also provides job protection for all employees who take sick leave as a result of precautionary or mandatory orders of quarantine or isolation, meaning that an employee must be restored to the position he or she held prior to taking leave, at the same pay and under the same terms of the pre-leave employment. The law also prohibits retaliation, discharge, penalization, or threats against employees who take leave as a result of a quarantine or isolation order.

While presumably well-intended, these protective anti-retaliation measures may make it more difficult for employers to terminate employees or eliminate certain positions during a reduction in force or layoffs once any COVID-19 orders have terminated.

Employees Eligible for Paid Leave

For those employers required to provide *paid* leave, such paid leave must be given without the use of accrued sick leave, unless the employee engages in non-business travel to a country identified as a Level 2 or 3 risk by the CDC with notice of this limitation. However, accrued sick leave and unpaid sick leave must be provided to the employee regardless of travel.

Critically, employees are not eligible for sick leave if they are asymptomatic or not yet diagnosed and physically able to work while under a mandatory or precautionary order through remote access or similar means. The law does not require sick leave to allow asymptomatic employees time off to undergo testing.

Voluntary Closure

The sick leave requirements do not apply to employers who have already voluntarily closed due to COVID-19 concerns. Should New York issue a “shelter-in-place” order, it is unclear whether this law would apply retroactively to such employers. Another potential gray area exists for the thousands of New York restaurants that have closed or drastically limited their operations following the Governor’s executive order requiring that restaurants cease serving patrons on premise. If subject to this law, already financially-strapped restaurants may be unable to comply with newly-enacted paid sick leave requirements.

Interaction with Federal Law

As of the drafting of this article, the federal government was also in the process of passing paid sick leave laws. Should the New York legislation provide greater sick leave protections and benefits to employees, the New York law will apply.

Additional Guidance Needed

There are several areas of vagueness in the law that will cause some uncertainty:

- Section 1(d) provides “[e]ach officer or employee shall be compensated at his or her regular rate of pay for those regular hours during which the officer or employee is absent from work due to a mandatory or precautionary order of quarantine or isolation due to COVID-19.” It is unclear whether the regular rate of pay only applies to public employers, as this

language is contained within the section of the statute setting forth sick leave eligibility for public employers.

- The law does not specify whether public employers or private employers with more than 99 employees are required to provide unpaid sick leave until termination of the COVID-19 order after providing the required 14 days of paid sick leave. Additional legislation or guidance should be adopted in the event a COVID-19 order is in place beyond 14 days.
- Similarly, the law does not specify whether employees of public employers or private employers with more than 99 employees who are affected by a COVID-19 order, are eligible for Paid Family Leave and disability benefits. Again, if a COVID-19 order is in place beyond 14 days, additional legislation or guidance will be needed to protect employees of large and public employers.

We are monitoring these developments closely and are available to discuss if employees or employers have any questions.